IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7323 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANJITSINH DOLATSINH WAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7323 of 2001

MR HN JHALA for Petitioner No. 1

MR VIPUL PANCHOLI, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/01/2002

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by ld. APP Mr. Vipul Pancholi for the respondent State. With the consent

of the parties, the matter is taken up for final hearing today.

2. Heard ld. counsel Mr. H.N.Jhala for the petitioner. The grievance of the petitioner is that he has been wrongly arrested in a serious offence punishable under Sections 7 & 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act"). According to the petitioner, he has been arrested on the basis of the FIR lodged at Shamlaji Police Station being II. CR No. 66/2001 for the offences punishable under the provisions of the NDPS Act. It is submitted by ld. counsel Mr.Jhala that the petitioner has waited for appropriate reliefs till this date for quashing FIR as investigation was going on. Now the police, at the end of investigation, has filed the chargesheet. It is submitted that the case against the petitioner is fictitious and fabricated and that petitioner has been falsely involved and, therefore, this Court should quash the criminal proceedings by invoking jurisdiction under Section 482 of CrPC. The facts narrated by the petitioner in para-2 of the petition, are as under:-

" On 26.6.2001, Shri D.S. Jadeja, attached to Shamlaji Police Station, lodged a complaint at Shamlaji Police Station at 10.30 at night interalia alleging that on 26.6.2001, he along with the police personnel, namely police constable Kantibhai Udarbhai, Shivabhai Motilal, Rameshbhai Kanjibhai, Rajendrabhai Bhawanbhai, had gone for investigation of Shamlaji Police Station I.CR No. 69/2001 lodged for the offence u/s 457, 300 of IPC. While they were returning to Shamlaji Police Station after making investigation of above case, when they reached Ratanpur Check Post, checking was being made of the vehicles coming from Rajasthan State in connection with prohibited liquor and narcotic drugs. Two panchas were called for witness and in their presence search was being conducted of these vehicles. During that time, one S.T. Bus bearing registration No. RJ-0-GP-1182 approached the Ratanpur Check Post. The name of the driver of the said bus was Nareshchandra Lalshankar Brahman and the bus was of Rajasthan State Road Transport Corporation. The name of the conductor was stated to be Narsinh Rajpur Sisodiya, resident of Dhindha, Taluka Charnod, Dist : Chitorgarh. The search of the said bus was being carried out in the presence of panchas. Before searching the persons, they were asked as to

whether they wanted search to be made before the competent Magistrate. When they approached the seat on the rear side of the driver's seat, the complainant found that both the passengers had become nervous. On suspicion, he asked their names. One gave his name as Ishwarlal Tulsiram Pagad, Taluka : Chitorgarh, M.P. and the other stated his name as Devilal Ghagad, resident of Mansor, Taluka Chitorgrah, M.P. The numbers of the seats of both the persons were No.32 & 33. In the presence of panchas, their personal search was carried out and before searching them, they were also asked as to whether they wanted their search to be made before the Magistrate or Gazetted Officer to which they replied in negative. On making search, underneath the seats of these persons, they found that there was a heavy khakhi parcel which was found in a blue coloured cloth THELI. The PSI inquired about the parcel the both the passengers stated that the same was theirs. The parcel was taken out from the cloth THELI and from that Khakhi they found one plastic bag wherefrom black coloured narcotic drug which appeared to be opium was found. In the plastic bag, there was also another bag containing black substance and the said substance was also opium. In the presence of panchas, it was found to be opium. From the nearby, one Prakashbhai Narandas, who had scale and weights and measures was called to weigh the said material and accordingly on weighing the same, the material in one THELI weighed 3,700 kgs. and from the second THELI, the drug opium that was found weighed 3,000 Kgs. Thus, in all 6,700 Kgs. of opium was recovered from the possession of these two persons. Samples of 100 gms. each were taken out in presence of panchas and thereafter this material was sealed and tied along with the slips containing signatures of the panchas. The total value of this opium was stated to be Rs. 60,000/. The panchanama in detail was prepared between 19.00 to 22.00 hours."

3. I have gone through the complaint at Annex.A and in my opinion, there is no direct allegation worth the name against the present petitioner. According to ld. counsel Mr. Jhala for the petitioner, there is no legal evidence available with the investigating agency and the petitioner has been involved in the offence on the strength of the statement of the accused arrested in

connection with the aforesaid crime. According to ld. counsel Mr. Jhala, ratio propounded in various decisions of this court as well as the Apex Court would squarely apply to the facts of the case of the present petitioner and hence FIR lodged against the petitioner should be quashed. Ld. counsel Mr. Jhala, in support of his above submission, has placed reliance on the following decisions;-

(1) Roy V.D. v/s State of Kerala, reported in (2000) 8 SCC 590; and
(2) Gomaram Somaram Jat v/s U.H. Patel & Anr. reported in 2000(1) GLR 99;

4. In the case of Roy V.D. (supra), the Apex Court has categorically propounded the ratio that the powers under Section 482 of CrPC can be invoked to quash the proceedings even in respect of the offences punishable under the provisions of the NDPS Act. It is observed by the Apex Court that " when criminal proceedings are initiated on the basis of illicit material collected on serch and arrest which are per se illegal and vitiate the trial itself, power under Section 482 can be exercised to quash the proceedings as continuance of such proceedings would amount to abuse of process of the Court."

5. In the case of Gomaram Somaram Jat (Supra), this Court (Coram: A.L Dave,J) has observed that in view of Section 43A of NDPS Act, statement made and signed by the person before any officer empowered under Section 53 for Investigation of offence, is relevant. In the same way, the statement under Section 67 of the said Act is also relevant and admissible in evidence. Such statements recorded also cannot be admitted in evidence as "gospel piece" and shall have to be examined on the touch-stone of evidentiary value. In the present case, the statements relied on by the Investigating Agency for the arrest of the present petitioner are not recorded as per the scheme of Sections 53A and/or 67 of the NDPS Act.

6. While dealing with the bail plea in the case of Mangalisng Bhansing Rathod v/s State of Gujarat & Anr., reported in 29(2) GLR 1028, this Court has held that "it is clear that all the provisions of Chapter XII of the Code cannot be attracted in respect of narcotics offences investigated by authorised officers of customs, excise and other department and such authorised officers are not police officers and statements made before them are not inadmissible in evidence and they have no power to file a chargesheet under Sec.173 of the Code." The words "such authorised officers are not police officers .....

under Sec.173 of the Code" are important and relevant. In the cae of the present petitioner, the statements made by the accused after arrest are undisputedly before the police officer and, therefore, obviously they would hit by the provisions of Sections 25 & 26 of the Indian Evidence Act.

7. The prayer of the present petitioner is limited and he has prayed to quash the FIR qua him only. In response to the query raised by this Court, ld. APP Mr. Pancholi has fairly submitted that on careful perusal of papers of investigation available to him, he is satisfied that there is no evidence except the statement of the accused persons arrested in the said crime. As the ld. APP was directed to see that responsible officer connected with the investigation of such a serious crime is available before the Court, Investigating Officer Shri R.G. Chavda with Writer Constable Shri Ibrahim is present in the Court and according to the Investigating Officer, there is no direct evidence which can be said to be legal in the eyes of law against the present petitioner. So, the say of the present petitioner shall have to be accepted. The prosecution by the State against the accused should be fair and one cannot be asked to face the trial merely because he has been named in the chargesheet as an accused.

8. In view of the settled legal position as above and for the reasons aforesaid, petition is allowed. FIR lodged at Shamlaji Police Station being II.CR No. 66/2001 for the offences punishable under Sections 7 & 22 of the NDPS Act against the present petitioner for which he has been chargesheeted and criminal proceedings are initiated against the him, are hereby quashed and set aside qua the present petitioner-accused Shri Ranjitsinh Dolatsinh Waghela, Re: Jaspur, Taluka : Padra, District: Vadodara.

9. Rule is made absolute. Yadi to the concerned Court as well as concerned Police Station.

18.1.2002 [C.K. BUCH, J]
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